HWG | HARRIS, WILTSHIRE & GRANNIS LLP

August 31, 2016

Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: ***Special Access for Price Cap Local Exchange Carriers,* WC Docket No. 05-25, RM-10593; *Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans,* WC Docket No. 15-247; *Business Data Services in an Internet Protocol Environment,* WC Docket No. 16-143**

Dear Ms. Dortch:

On August 29, 2016, Charles McKee and Chris Frentrup of Sprint Corporation, and the undersigned of Harris, Wiltshire & Grannis LLP, met with Stephanie Weiner, Senior Legal Advisor to Chairman Wheeler, and Matthew DelNero, Chief of the Wireline Competition Bureau. The attached presentation formed the basis of our discussion.

Pursuant to the Commission's rules, I have filed a copy of this for inclusion in the public record of the above-referenced proceedings. Please contact the undersigned with any questions.

Sincerely,

Jennifer Bagg
Counsel to Sprint Corporation

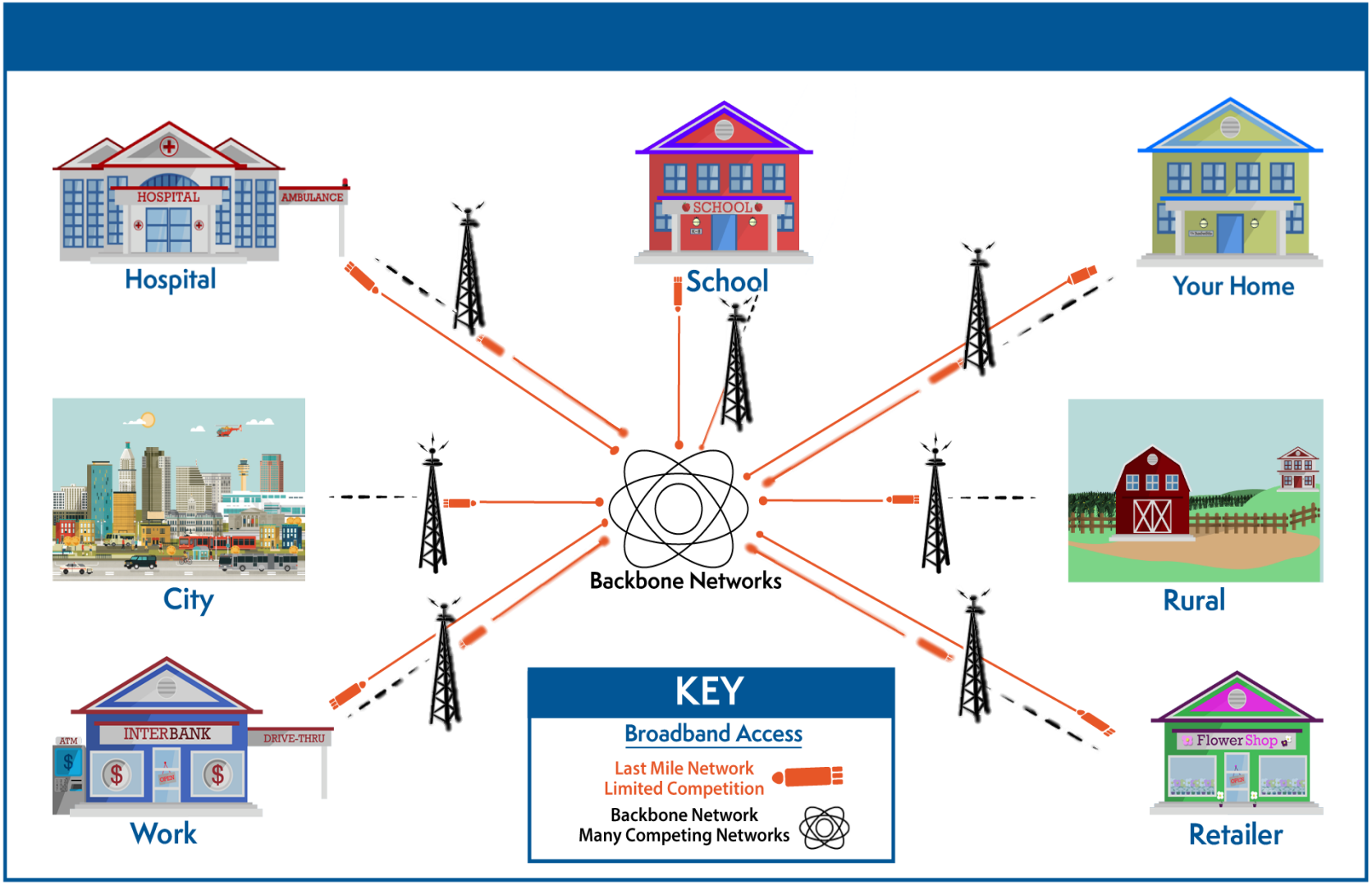
Attachment

cc: meeting participants

Business Data Services

August 29, 2016

Business Data Services are Critical to Mobile Wireless Services Today and in the Future



#moveforward

Business Data Services Reform is Necessary to Achieve the Chairman's Wireless Goals

- Mobile wireless broadband competition hinges on BDS reform

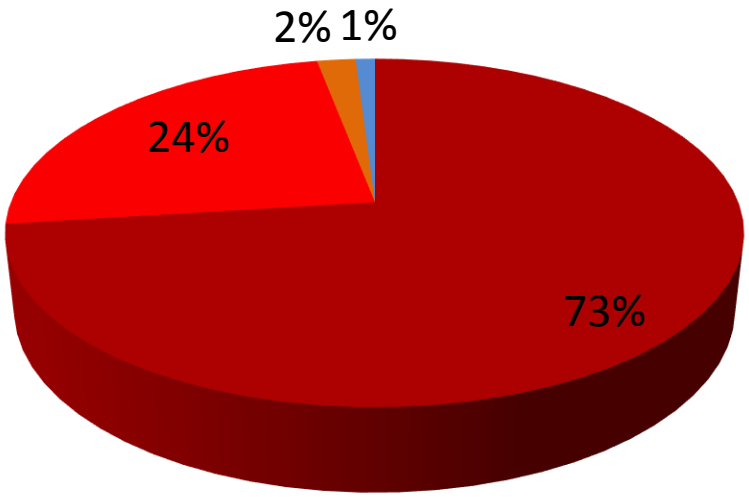
  You [have] to connect all those antennas—and that's a backhaul issue. And that's a special access issue. **Chairman Wheeler, CTIA Super Mobility 2015**

- The need for wireless backhaul will grow exponentially as consumers utilize more bandwidth for advanced services such as video and new wireless standards are introduced
- The mobile broadband network of the future will require large network "densification" investments to address exploding consumer demand and facilitate deployment of new wireless technologies
- Cell sites today typically require more than 50 MB capacity to meet demand; 100 MB and 200 MB is common
- Wireless carriers need access to high-capacity BDS at reasonable rates in order to remain competitive
- Unjust and unreasonable BDS pricing increases barriers to 5G migration

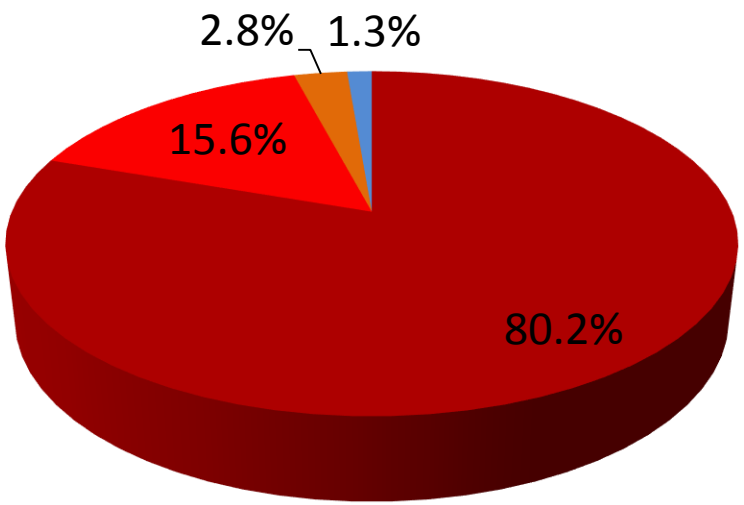
BDS Competition (Locations/Census Blocks)

- Highly concentrated market with very few competitive locations:
  - Monopoly or duopoly in 97% of locations and 95% of census blocks
  - 1.3% of census blocks and 1 % of locations are competitive

Competition by BDS Locations*



Competition by Census Blocks



Monopoly Duopoly Three providers Four or more providers

* Locations = buildings and cell sites

#moveforward

BDS Competition + EoHFC

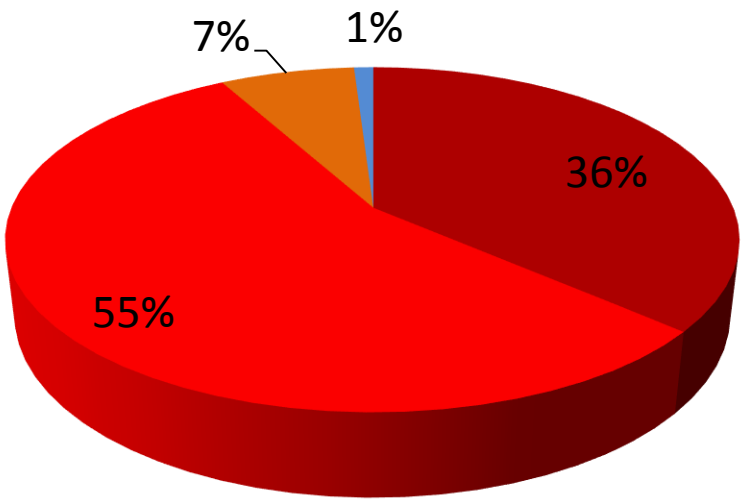
- New cable submissions report CBs with an Ethernet-capable headend. Headend may, but does not always, signal that the cable company can provision BDS using Ethernet over a hybrid fiber coax network ("EoHFC")

- New data overstates impact of EoHFC because cable cannot provide BDS to all customers using EoHFC in all reported CBs:
  - Cable operators cannot build facilities to all locations within a CB
  - Even if they could, cable networks cannot support EoHFC at scale
  - EoHFC is limited to symmetrical 10 Mbps
  - EoHFC service quality not suitable for all services

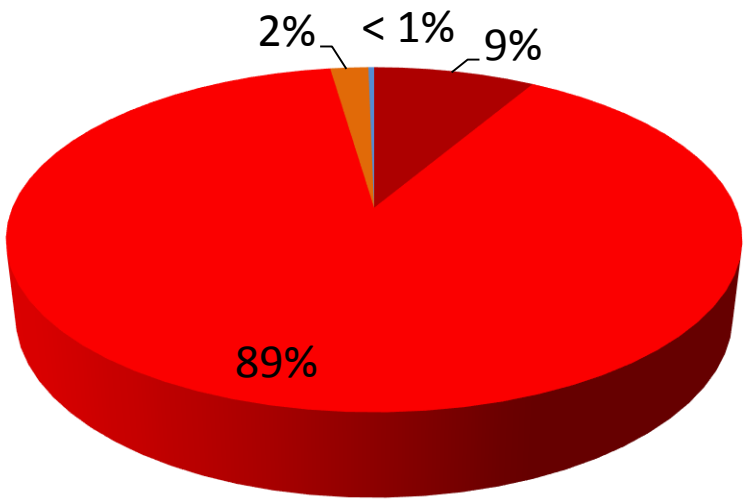
- Setting aside buildout, capacity, and performance constraints, new cable data does not change competition analysis
  - No significant differences in regression results
  - Concentration is still very high

BDS Competition + EoHFC (cont'd)

Competition by Census Block (including EoHFC): FCC Data Set



Competition by Census Block (including EoHFC): Expanded Data Set*



Monopoly Duopoly Three providers Four or more providers

Note: Percentages may not add up to 100% due to rounding.

* Expanded data set includes all census blocks where cable companies reported they have Ethernet-capable headends located (but not necessarily actual connections or customers). ILEC assumed to have a connection in all CBs.

Low & High-Bandwidth Business Data Services

At or Below 50 Mbps

- The FCC should presume BDS at or below 50 Mbps are not competitive
- The record demonstrates that competition for lower-capacity BDS is exceptionally scarce and unlikely to develop in the future
- EoHFC does not change this analysis

Above 50 Mbps

- The FCC should apply the CMT to BDS above 50 Mbps
- The record demonstrates that competition for higher-capacity BDS varies by geography
- Even at these higher capacities, competition in the vast majority of areas remains inadequate to discipline prices
  - 94% of locations and 83% of census blocks have at most two providers of BDS above 50 Mbps

The Competitive Market Test

The FCC should administer a CMT by census block or adjacent census blocks

- The relevant geographic market remains the customer location, but CBs or adjacent CBs ease administrative burden
- CBs conservatively account for potential competition; assumes nearby competitors can extend networks in response to incumbent behavior
- Use of adjacent CBs is even more conservative

The CMT should deem a CB or adjacent CB competitive where four or more providers reported a "Connection" in the data collection

- Measuring competition by connections, rather than the presence of an active customer, assigns additional weight to potential competition
- Measuring competition by the mere presence of fiber would be arbitrary
- The FCC can update data on connections using a modified Form 477, and need not re-administer a comprehensive data collection

TDM Remedy: Price Cap

The FCC should update the existing price cap system to:

- Reduce existing TDM price cap indices to account for the long time gap since the system last accounted for productivity
- Adopt a going-forward X-Factor

Updated CACM model provides a strong basis for the one-time adjustment and going-forward X-factor

- CACM model enables best estimate of the net impact of productivity changes on industry costs
- Model produces productivity of fiber networks, which is the closest productivity measure to BDS that available data allows

Ethernet Remedy: Benchmark

The FCC should establish a benchmark for Ethernet-based BDS in markets that are presumed non-competitive or fail the CMT

- Use tariffed DS1 rate (after PCI adjustment) as the benchmark for lowest speed, highest quality Ethernet service above 1.5 Mbps (e.g., 2 or 3 Mbps)
- Establish price curve using each price cap carrier's rates for highest quality, three-year term Ethernet service
  - Refer to carrier's publicly available product guides in areas subject to competition for rate information
- Apply price curve to benchmark for lowest speed service to arrive at benchmarks for higher bandwidth services
- Apply annual X-factor to reduce benchmarks going-forward
- Exempt new entrants for now
- Adopt streamlined dispute resolution process

Backstop Remedies

The FCC should establish backstops in all markets to ensure just and reasonable behavior

- Confirm that wholesale rates must be lower than retail rates to be just and reasonable
- For multi-location buyers with purchases in competitive and non-competitive census blocks, apply protections for non-competitive areas to entire contract
- Confirm that setting higher prices for BDS sold to wireless carriers is discriminatory and violates the Act

Sprint